REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY OF LAS PIÑAS, represented by RIZAL Y. DEL ROSARIO, in his capacity as CITY TREASURER, Petitioner,	**C.T.A. EB No. 280** (C.T.A. AC No. 18)
-versus-	Present: Acosta, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, *JJ.*
SEALED AIR (PHILIPPINES) INC., Respondent.	**Promulgated:** MAR 12 2008 1:45 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* assailing the Decision dated November 13, 2006 and the Resolution dated March 9, 2007 issued by the First Division of this Court in the case entitled, *"Sealed Air (Philippines), Inc. vs. The City of Las Piñas and Mr. Rizal Y. Del Rosario, in his capacity as Treasurer of the City of Las Piñas"*, docketed as CTA A.C. No. 18. The assailed Decision

SET ASIDE the decision and order issued by the Hon. Raul Bautista Villanueva of RTC Branch 255 of Las Piñas City dated June 28, 2005 and October 6, 2005, respectively. In the same assailed Decision, the First Division DECLARED WITHOUT FORCE AND EFFECT the assessments dated August 1, 2003 and September 8, 2003 issued by the respondent City Treasurer of Las Piñas.

The Resolution dated March 9, 2007 denied the respondent's (herein petitioner) Motion for Reconsideration for lack of merit.

THE FACTS

The facts of the case as found by the Court in Division are as follows:

> Petitioner Sealed Air (Philippines) Inc. (formerly Cryovac Philippines Inc.), is a domestic corporation with principal office at Don Mariano Lim Industrial Complex, Alabang-Zapote Road, Las Piñas City.
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> Respondent City of Las Piñas is the local government unit exercising local tax jurisdiction over the petitioner. Respondent Rizal Y. Del Rosario is the Treasurer of Las Piñas City and is being impleaded in this Petition for Review as such.
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> On August 4, 2003, petitioner received a letter dated August 1, 2003 from the respondent City Treasurer requiring the former to settle the assessment made on the alleged local business tax deficiencies in the total amount of P5,499,323.25, inclusive of penalties and interests, covering the taxable period 1999-2003.
>
> Petitioner received a follow-up assessment letter dated September 8, 2003 on September 9, 2003. Considering that the first assessment letter sent by the respondent City Treasurer was received by the petitioner on August 4, 2003, the latter had until October 3, 2003 within which to file its written protest to contest the said assessment pursuant to section 195 of the LGC.
>
> It appears from the respondent City Treasurer's letters that the assessment made was based on the petitioner's alleged failure to pay the correct amount of business taxes during the

covered period. Notwithstanding the fact that petitioner was regularly paying the relevant local business taxes, a discrepancy arose due to the alleged erroneous classification of the petitioner.

According to the City Treasurer, the business tax classification of the petitioner should be that of "retailer" which is being taxed under Article VIII, Section 31 (d) of the Revenue Code of Las Piñas at the rate of One Percent (1%) on gross receipts exceeding P400,000.00. Petitioner was classified as a "wholesaler" prior to the issuance of the protested assessment and the tax reclassification had given rise to the alleged tax deficiencies of the petitioner.

In view of petitioner's assessment for local business tax deficiency, Sealed Air disputed the said assessment as the same is without any legal or factual basis- it being based on the wrongful assumption on the nature and kind of petitioner's business activities. Thus, petitioner filed its letter-protest dated September 24, 2003 with the respondent City Treasurer on September 30, 2003. Without admitting the validity of the subject assessment, petitioner showed that the deficiency tax due should be P3,625,078.25 based on a patent summation error committed in computing the alleged tax due.

In support of its protest, petitioner averred that it is a wholesaler and not a retailer, as in fact not allowed by law to engage in retail trade business and it has never been involved in any transaction involving retail trade. Also, its sales activities were purely made on a wholesale basis. Thus, as far as the petitioner was concerned, the tax deficiency assessment for local business tax covering the period 2000- 2003 should be withdrawn. On the tax deficiency for 1999, the petitioner argued that the City of Las Piñas has no jurisdiction to collect taxes on the gross income generated by Sealed Air in 1998 considering that it has started business operations in Las Piñas only in January 1999.

However, the respondent City Treasurer was not convinced with the petitioner's arguments and proceeded to deny the protest. Petitioner filed an Appeal with the RTC of Las Piñas, entitled *"Cryovac Philippines, Inc. vs. THE CITY OF LAS PIÑAS AND MR. RIZAL Y. DEL ROSARIO, in his capacity as Treasurer of the City of Las Piñas."* The said case was raffled to branch 255 and docketed as Civil case No. 03-0259.

After trial on the merits, a Decision dated June 28, 2005 was promulgated by Honorable Presiding Judge Raul Bautista Villanueva, which is quoted hereunder for reference, to wit:

> "**WHEREFORE,** premises considered, judgment is hereby rendered as follows:

> 1. **DISMISSING** the Appeal dated 18 November 2003 filed by the appellant Cryovac Philippines, Inc., for utter lack of merit;
>
> 2. **DECLARING** the appellant Cryovac as a retailer and subject to business taxes under Sec. 31 (d) of the Revenue Code of the City of Las Piñas;
>
> 3. **FINDING** the said appellant liable for tax deficiencies due to the appellees City of Las Piñas and City Treasurer Rizal del Rosario and to immediately pay the same in an amount to be re-computed covering the period 1999 up to 2003; and
>
> 4. **REQUIRING** the above appellant to subsequently pay business taxes due from it as a "retailer", not as a "distributor".
>
> No pronouncement as to costs.
>
> **SO ORDERED."**

Petitioner filed a Motion for reconsideration dated July 29, 2005 seeking reconsideration of the above-quoted Decision. On October 6, 2005, the court *a quo* denied the said motion for lack of merit.

Hence, this Petition for Review filed with the Court of Tax Appeals docketed as A.C. Case No. 18 entitled, "*Cryovac Philippines, Inc. vs. The City of Las Piñas and Mr. Rizal Y. Del Rosario, in his capacity as Treasurer of the City of Las Piñas*", wherein petitioner raised the sole issue:

> WHETHER OR NOT PETITIONER SHOULD BE CLASSIFIED AS RETAILER SINCE THE PETITIONER IS IN TRUTH AND IN FACT A WHOLESALER.

Acting on the Petition, the First Division of this Court issued a Decision on November 13, 2006 which is now the subject of appeal. The dispositive portion of the said Decision reads, as follows:

> IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **GRANTED**. Accordingly, the 28 June 2005 Decision and 6 October 2005 Order both issued by the Hon. Raul Bautista Villanueva of RTC Br. 255, Las Piñas City, are hereby **SET ASIDE**. In addition, the 01 August 2003 and 08 September 2003 assessments issued by the respondent City Treasurer of Las Piñas are hereby **DECLARED WITHOUT FORCE and EFFECT.**
>
> **SO ORDERED.**

The respondent (herein petitioner) filed a Motion for Reconsideration of the Decision dated November 13, 2006 against the petitioner (herein respondent). In a Resolution dated March 9, 2007, the First Division denied the Motion for lack of merit.

Hence, this Petition for Review *En Banc.*

In a Resolution dated May 7, 2007, the Court *En Banc* ordered the respondent to file its comment on the petition to which the latter complied on June 18, 2007.

THE ISSUES

I.

Whether or not the Respondent should be classified as a wholesaler or retailer in accordance with the provision of the Local Government Code of 1991 and the Revenue Code of the City of Las Piñas.

II.

Whether or not the acts of Respondent put it within the purview of the definition of a retailer; and as such, is liable to pay Petitioner for tax deficiencies in the amount of Three Million Six Hundred Twenty-five thousand Seventy-Eight pesos and Twenty-five centavos (Php 3,625,078.25).

PETITIONER'S ARGUMENTS

Petitioner avers that the provisions of the Local Government Code (LGC) of 1991 (Republic Act No. 7160) and the Revenue Code of the City of Las Piñas (City Ordinance No. 104-92), particularly Section 131(w) and Section 3(w), respectively, classify Sealed Air as a retailer. What "retail" merely entails is that a commodity is bought for the consumption of the purchaser. By themselves, said terms are understood in their common meaning, thus, there is no reason to resort to a peculiar definition of the term "Retail."

RESPONDENT'S COMMENT

Respondent reiterates that it is a wholesaler in accordance with the applicable laws (LGC of 1991, Revenue Code of the City of Las Piñas) and prevailing jurisprudence citing the cases of *Marsman & Co., Inc. vs. First Coconut Central Co., Inc. GR. No.L-39841, June 20, 1988 162 SCRA 206, Cornelio Balmaceda vs. Union Carbide Phils. Inc. G.R. No. L-30442, September 30, 1983 124 SCRA 893, B.F. Goodrich Philippines, Inc. vs. Teofilo Reyes Sr. G.R. No. L-30067 April 19, 1983 121 SCRA 363, and Mobil Oil Phils., Inc. vs. Teofilo Reyes Sr. G.R. No. L-29013 August 31, 1983 124 SCRA 373*, and therefore, respondent must be taxed as a wholesaler.

COURT'S RULING

We find the petition without merit.

To sum up the arguments raised by the petitioner, its ultimate tenor is for the Court to decide merely on the definitions provided by LGC of 1991 and the Revenue Code of the City of Las Piñas without resorting to other laws and jurisprudence.

We quote hereunder the relevant provisions of LGC of 1991 defining the terms "retail" and "wholesaler", to wit:

> "SECTION 131. Definition of Terms. — When used in this Title, the term:
> xxx
> xxx
> (w) "Retail" means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold;
> xxx

> (z) "Wholesale" means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.
> xxx"

Meanwhile, Section 3 Chapter I of City Ordinance No. 104-92, An Ordinance Approving the Revenue Code of the City of Las Piñas provides:

> "SECTION 3. Definition of terms.
> xxx
> w) "Retail" — means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold;
> xxx
> z) "Wholesale" — means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.
> xxx"

If We are to determine the correct classification of the respondent on the basis alone of the above-quoted definitions, the petitioner's contention is still without leg to stand on.

We agree with the petitioner that if the sale is made to a consumer or end-user for his own personal consumption and not for the purpose of resale, the sale should be classified as retail, but if the sale is made for the purpose of reselling, the same must be considered to have been made at wholesale

A closer analysis of these definitions will clearly place the respondent in the category of wholesaler. The products of the respondent, i.e. packaging materials, are sold to its clients (Jollibee Foods Corporation, Jaka Foods, Swift Foods, Monterey Farms, The Purefoods-Hormel Co. Inc. to name a few) to serve as container for the latters' own finished food products. It is only when these finished food products are sold to the ultimate "end-user" that the production and distribution chain can be said to have been completed. The chain starts from the respondent selling the packaging materials to its clients who in turn shall now use these packaging materials as containers for their products. The final link in the chain is when the finished food products are transferred from the respondent's clients' hands (i.e. Jollibee Foods Corporation, etc.) to its ultimate consumer for the latter's personal consumption.

The packaging materials become part of the finished food product being sold by the respondent's clients. The finished food product cannot be said to have been completed its production stage without it being packed using the respondent's packaging materials. In effect, these packaging materials are being resold to the general public as part of the cost of the finished product of the respondent's clients. As clearly discussed in the ruling of the First Division in its Decision, to wit:

> "In the sale of food products to the end-users/consumers, manufacturing and industrial companies incorporate and/or add the cost of all raw materials and expenses incurred in order to produce the products. Necessarily, the petitioner's clients included the cost of the packaging materials in their selling price so as to compensate the cost or expense they incurred in the production and manufacturing of their food products."

Accordingly, the clients of the respondent are not the end-users of the packaging materials. Thus, respondent cannot be considered as retailer within the definition provided above.

Petitioner avers that the definition in the above laws intended businesses covered by such definition to be classified and taxed as such. This allows a broader spectrum of business to be taxed within its definition, which are neither contrary or in conflict with the present retail laws.

Looking at our retail laws, the sales by the respondent to its clients will still not fall within the definition of "Retail Trade". Under the

Rules and Regulations Implementing Republic Act No. 8762, An Act Liberalizing The Retail Trade Business, Amending Republic Act No. 1180, "Retail Trade" has been defined as follows:

> "Section 1. For purposes of this Rules and Regulations:
> (a) "Retail Trade" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.
> xxx

The same implementing rule enumerates the **sales not considered as retail**, to wit.

> Sec. 2. Sales Not Considered As Retail. -- The following sales are not considered as retail:
> xxx
> xxx
> (e) Sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them; or
> xxx"

Based on the above implementing rule, the sales made by the respondent to its industrial and commercial users (i.e. Jollibee Foods Corporation, etc.) are **not considered as retail.** If We are to sustain the petitioner's argument, then, the rule should have included the sales of the respondent to its clients as retail sales.

Meanwhile, petitioner argues that the First Division erred in applying the case of *Marsman & Co., Inc. vs. First Coconut Central Co., Inc. GR. No.39841, June 20, 1988*, to the case at bar because the said jurisprudence (*Marsman, 1988*) is much older than the statute (LGC of 1991). There already being a law defining the term "retail", the Court did not have to resort to jurisprudence.

The Court is not convinced with the petitioner's argument.

Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.[1]

[1] Article 8 of the Civil Code of the Philippines.

Supreme Court decisions assume the same authority as valid statutes.[2] Besides, *Marsman Case* has not been modified by the Supreme Court and remains a good case law.

Further, in statutory construction, when particular words and phrases have acquired a settled meaning thru judicial interpretation and are used in a subsequent statute upon the same or analogous subject, they should be interpreted in the latter as in the former. [3]

The First Division of this Court in applying the case of Marsman stresses three (3) elements that should be present to be engaged in retail, to wit:

(a) That the seller should be habitually engaged in selling;

(b) The sale must be direct to the general public; and

(c) The object of the sale is limited to merchandise, commodities or goods for consumption.

As to the first element, it is undisputed that respondent habitually engaged in selling packaging materials. However, petitioner is not convinced on the findings of the First Division that the second element is lacking. It mentions the case of *Balmaceda vs. Union Carbide Philippines Inc. (September 30, 1983)* in explaining the term "General Public". It argues that having a limited clientele does not take it away from the ambit of general public as long as there is actually no prohibition to the general public in making similar purchases. Hence, the general public can avail of the services and products of respondent Sealed Air if the need arises.

The Court disagrees with the petitioner's contention.

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[2] Floresca vs. Philex Mining Corporation, 136 SCRA 141 [1985].
[3] Ruperto G. Martin, Statutory Construction, Revised Edition (1972), p. 151.

There may have been no prohibition to the general public in availing the packaging products from the respondent, however, it is the latter that is prohibited from engaging in retail trade. Pursuant to Republic Act No. 8762, Liberalizing the Retail Trade Business, Repealing Republic Act 1180, unless the respondent complies with the minimum capitalization requirement, it cannot engage in retail trade business. Thus, respondent's products are not readily available to whoever desires to avail them for their own consumption.

Further, as pointed out by the respondent, the sales process between the respondent and its clientele involve the following, to wit: (1) sending of purchase orders by the customer to the respondent; (2) preparation of sales invoices and delivery receipts by the respondent; and (3) actual delivery of the packaging materials by the respondent to the customers. In contrast to the sale to the general public, there is no necessity of action from the purchaser to initiate the sale; no purchase order is required. Retail items sold are available in the shelves/racks of retail stores. The only action required from the purchase is to choose the item he/she intends to buy from the display of items.

Meanwhile, on the third element, petitioner contends that the First Division erred in classifying respondent's products as producer goods because the same packaging materials are not raw materials or tools used to produce or manufacture food products.

We do not agree.

The packaging materials form an important part in the production of goods being sold to the general public. This issue has been correctly discussed by the First Division in its Decision, to wit:

> "As earlier discussed, they are elements utilized in the production and manufacturing process of the food products, and as such, they are considered as intermediate or auxiliary goods. They do not pertain to final

> and end use which is the direct satisfaction of human personal wants and needs. Although not raw materials in the production food and non-food products, the packaging materials are essential tools in the production and manufacturing of food products being sold to the general public."

WHEREFORE, in light of the foregoing laws and jurisprudence, the Petition for Review *En Banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated November 13, 2006 and Resolution dated March 9, 2007 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice